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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/660,257	09/12/2000	Don Wiley Smith	22601-P002US	6780

7590 12/05/2001

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EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 12/05/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/660,257

Applicant(s)

SMITH ET AL.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18, 20, 21 is/are allowed.
- 6) ☒ Claim(s) 1-17 and 22-25 is/are rejected.
- 7) ☐ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

The drawings are objected to because:

In Fig. 1 “holes 101a,b” (see Specification page 6 line 16) are not marked as such.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 10-17, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 2, line 3, the phrase “and derivatives thereof” renders the claim indefinite because there is no objective standard to determine which chemical species are derivatives of NAA and IBA.

In Claim 10, line 6, the phrase “and derivatives thereof” renders the claim indefinite because there is no objective standard to determine which chemical species are derivatives of NAA and IBA.

Art Unit: 3643

In Claim 19, line 5, the phrase “and derivatives thereof” renders the claim indefinite because there is no objective standard to determine which chemical species are derivatives of NAA and IBA.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2, 4, 5, 7, 10, 15, 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Mehra-Palta (US 4,417,417).

As to Claim 1, Mehra-Palta discloses a method of treating distressed tree species (col. 1 lines 10-30; col. 11 lines 21-36) comprising creating a mixture of fertilizer (nutrients in GD medium, col. 11 lines 21-36; col. 10 lines 24-43) and a growth hormone (NAA, col. 11 lines 24-36) and applied to the root area of distressed tree (shoot of col. 11 lines 21-36).

As to Claim 2, Mehra-Palta further discloses NAA (col. 11 lines 21-36).

As to Claim 4, Mehra-Palta further discloses a mixture with at least one powder (defined as components of GD medium, col. 4 lines 5-32).

As to Claim 5, Mehra-Palta further discloses a mixture with at least one liquid (defined as the GD medium before it solidifies, col. 11 lines 21-36; col. 10 lines 24-43).

As to Claim 7, Mehra-Palta further discloses the fertilizer liquid (defined as the GD medium before it solidifies, col. 11 lines 21-36; col. 10 lines 24-43).

Art Unit: 3643

As to Claim 10, Mehra-Palta discloses a mixture for treating distressed tree species (col. 1 lines 10-30; col. 11 lines 21-36) comprising fertilizer (nutrients in GD medium, col. 11 lines 21-36; col. 10 lines 24-43) and a growth hormone, NAA (col. 11 lines 24-36).

As to Claim 15, Mehra-Palta further discloses the fertilizer liquid (defined as the GD medium before it solidifies, col. 11 lines 21-36; col. 10 lines 24-43).

As to Claims 22 and 23, Mehra-Palta discloses a kit for treating distressed tree species (col. 1 lines 10-30; col. 11 lines 21-36) comprising a mixture of fertilizer (nutrients in GD medium, col. 11 lines 21-36; col. 10 lines 24-43) and a growth hormone, NAA (col. 11 lines 24-36); and a container (container is inherent in the method disclosed at col. 11 lines 21-36).

As to Claim 24, Mehra-Palta further discloses instruction (inherent in the scientific method to record materials and methods used in research).

As to Claim 25, Mehra-Palta further discloses applying to the root area of distressed tree (shoot of col. 11 lines 21-36).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 6, 8, 9, 11-14, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehra-Palta (US 4,417,417).

Art Unit: 3643

As to Claim 3, the limitations of Claim 1 are disclosed as described above. Not disclosed is the distressed tree a Post Oak. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Mehra-Palta by using Post Oak so as to clonally propagate this species when needed.

As to Claim 6, the limitations of Claim 1 are disclosed as described above. Not disclosed is the fertilizer with specific N,P, and K ranges as percent by weight. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Mehra-Palta by using the specific ranges of NPK in Claim 6 to optimize the system and promote healthy root growth.

As to Claims 8 and 9, the limitations of Claim 1 are disclosed as described above. Not disclosed is the use of a fungicide, tetramethylthiuramdisulfide. Examiner takes official notice that it is old and well known in the tissue culture art to use a fungicide in growth media to inhibit fungus growth. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Mehra-Palta by using a fungicide in the growth medium to inhibit fungus growth so as to enhance plant survival.

As to Claims 11-13, the limitations of Claim 10 are disclosed as described above. Not disclosed are the specific concentrations (by weight or dosage) of growth hormone of Claims 11-13. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the mixture of Mehra-Palta by using the specific growth hormone concentrations of Claims 11-13 to optimize the system and promote healthy root growth.

As to Claim 14, the limitations of Claim 10 are disclosed as described above. Not disclosed is the fertilizer with specific N,P, and K ranges as percent by weight. It would have

Art Unit: 3643

been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Mehra-Palta by using the specific ranges of NPK in Claim 14 to optimize the system and promote healthy root growth.

As to Claims 16 and 17, As to Claims 8 and 9, the limitations of Claim 1 are disclosed as described above. Not disclosed is the use of a fungicide, tetramethylthiuramdisulfide. Examiner takes official notice that it is old and well known in the tissue culture art to use a fungicide in growth media to inhibit fungus growth. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Mehra-Palta by using a fungicide in the growth medium to inhibit fungus growth so as to enhance plant survival.

Allowable Subject Matter

Claims 18, 20, and 21 are allowed.

Claim 19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. O'Neal and JP64-13006 disclose in the prior art the use a mixture of a fertilizer and hormone but applied to the foliage of a plant. Meadows discloses the in the prior art applying a compostion to the soil.

Art Unit: 3643


Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



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